

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRANCIE E. MOELLER, et al.,

Plaintiffs,

v.

TACO BELL CORPORATION,

Defendant.

No. C 02-5849 PJH

**CASE MANAGEMENT AND  
SCHEDULING ORDER**

The scheduling disputes raised in the parties' competing proposals are resolved as follows:

**1. Defendant's motion pertaining to the statute of limitations:**

Sep 3, 2008	motion
Sep 24, 2008	opposition
Oct 8, 2008	reply
Oct 29, 2008	hearing (9:00 a.m. not 11:00 a.m.)

**2. Defendant's remediation efforts**

Defendant has taken the position that its remediation of certain access problems has mooted or will moot plaintiffs' claims for injunctive relief insofar as those claims are based on barrier removal. Plaintiffs request that an April 1, 2009 deadline for completion of the remediation be imposed. Although not altogether clear from the proposals, it appears that plaintiffs plan to have their expert inspection of all 200 restaurants take place between April 1, 2009 and the proposed May 1, 2009 deadline for expert reports.

First, the court declines at this time to order that defendant complete its remediation efforts by any particular date. As far as the court can discern, defendant's remediation

efforts are entirely voluntary as there has been no determination of liability on all of the  
 access issues; and on the issues for which Judge Jenkins granted partial summary  
 judgment on liability, no injunction has yet issued. Thus until ordered by this court to act,  
 defendant is free to determine its own schedule without interference by plaintiffs.  
 Defendant is advised, however, that any claim it makes that injunctive relief is moot  
 because of its remediation must be based upon remediation that has actually been  
 completed. The court does not expect to entertain a motion in this regard until the work is  
 done.

Second, with respect to the timing of the inspections, the court is at a loss to  
 understand why all of the inspections must take place after all of the remediation has been  
 completed, within a relatively short time frame before exchange of expert reports. If  
 defendants have already completed remediation of as many as 150 restaurants, there is no  
 reason why plaintiffs' expert cannot begin the inspections immediately. If, as plaintiffs  
 suspect, all access problems have not in fact been corrected, there will be plenty of time  
 given the proposed case schedule for the parties to meet and confer and for the defendant  
 to take further corrective action. After all, the goal of this litigation is the removal of the  
 barriers that prevent full access to these facilities. Accordingly, the inspections shall  
 commence immediately.

### 3. ADA claims (phase one):

In order to give both parties sufficient time to prepare and present their positions on  
 the ADA claims, the court will adopt plaintiffs' proposed schedule, modified to take into  
 account the court's anticipated availability:

May 1, 2009	exchange of expert reports on ADA liability
Jun 1, 2009	exchange of rebuttal reports
Jul 1, 2009	expert discovery cutoff on ADA liability
Jul, 29, 2009	dispositive motion filing deadline on ADA liability
Aug 19, 2009	opposition
Sep 2, 2009	reply
Sep 23, 2009	hearing

### 4. Mediation:

Within 30 days of court's ruling on dispositive motions, the parties shall meet and

1 confer and submit a joint request for either mediation (specifying whether the court's  
2 program or private provider is preferred) or a settlement conference with a magistrate  
3 judge.

4 **5. State law claims (phase two):**

5 The court has already determined that the state law claims will be bifurcated from  
6 the ADA claims. It is not a surprise that the parties were unable or unwilling to agree on  
7 whether discovery on the state law claims should commence simultaneously with the  
8 discovery on the ADA claims, or after its completion. The court's view is that much of the  
9 state law discovery will be unique to those claims, but that some of it will be duplicative of  
10 the ADA discovery and/or intertwined with it. The court has no confidence in the parties'  
11 ability to agree on what is duplicative and intertwined and what is not. And the court is not  
12 interested in having either its or the magistrate judge's calendar burdened with discovery  
13 motions concerning the scope of permissible discovery. Accordingly, a compromise is not  
14 likely to work and the court therefore elects defendant's approach with some modification.

15 Discovery on the state claims shall commence immediately after the hearing on the  
16 ADA claims. While defendant would prefer that discovery not begin until after the court's  
17 decision on ADA liability, that position appears to be based on defendant's repeatedly  
18 stated intention to move the court to decline to exercise jurisdiction over the state claims  
19 once it has established that the ADA claims are moot by virtue of its remediation of the  
20 access barriers. As it is not a given that defendant will be able to persuade the court either  
21 that ADA injunctive relief is moot or that the court should decline to exercise jurisdiction  
22 over the state claims, the court sees no reason that phase two discovery should not go  
23 forward while the parties are awaiting the court's ruling on the ADA claims, as that  
24 discovery will be necessary regardless of which forum ultimately adjudicates the state  
25 claims.

26 Within 30 days of the court's ruling on the ADA dispositive motions, the parties shall  
27 meet and confer and submit a stipulation regarding the discovery deadlines and briefing  
28 schedule for dispositive motions on the state law liability issues.

1 **6. Damages (phase three):**

2 Damages discovery and motion practice will be proceed after dispositive motions on  
3 state law liability. Thus, a schedule for adjudicating damages for liability, under either  
4 federal or state law as determined, will be discussed at a further case management  
5 conference at a later date.

6 **7. Trial (phase four):**

7 How or whether this case will be tried will depend on a number of currently unknown  
8 variables to be discussed at a further case management trial.

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10 **IT IS SO ORDERED.**

11 Dated: June 27, 2008



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13 PHYLLIS J. HAMILTON  
14 United States District Judge  
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